IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. 31995-M of 2006

Date of decision: 07.05.2007

Gurdeep Singh and others.

…. Petitioners

Versus

State of Punjab and another.

… Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. S.K. Laddi, Advocate,
for the petitioners.

Mr. B.S. Sra, Deputy Advocate General, Punjab,
for respondent No.1

Mr. M.L. Saggar, Senior Advocate with
Mr. G.P. Vashisht, Advocate,
for respondent No.2.

S.D. Anand, J.

1. The petitioners have impugned order dated 05.03.2005 (Annexure P-2) vide which the learned Trial Magistrate ordered their summoning for trial under Sections 420/465/467/468/471/120-B of the Indian Penal Code. Also sought is the quashing of the complaint dated 14.04.2001 (Annexure P-1) on the basis whereof the impugned order (Annexure P-2) was granted by the learned Trial Magistrate.

2. Petitioner No.1 is husband of his estranged wife/complainant – Daljit Kaur. Petitioner No.2 is his mother. Petitioners Nachatar Singh and Harbans Singh (Nos. 3 and 4 respectively) are attesting witnesses of a Will

dated 06.12.1992. The relations between the petitioner – Gurdeep Singh and complainant/respondent No.2-Daljit Kaur, whose marriage was solemnized in March 1999, are estranged and they are litigating against each other on the matrimonial front and also on the criminal side. The petitioner has, in the course of the impugned complaint, levelled a false allegation that the impugned Will dated 06.12.1992 (Annexure P-3) is forged. It is on the basis of the preliminary evidence (consisting of the own statement of the complainant-respondent No.2 and number of other witnesses) (CW1-Jagjit Singh, Record Clerk, CW2- Kewal Singh, CW3-Surjit Singh, Numberdar, CW4-Malkiat Singh, Record Keeper, CW5-P.C. Gupta, Advocate, CW6-Gurcharan Singh, Clerk, CW7-Krishan Lal Kapoor and CW8-Navdeep Gupta, Handwriting expert) that the impugned order came to be granted by the learned Trial Magistrate.

3. I have heard learned counsel for the parties and carefully perused the record.

4. The plea raised on behalf of the petitioners is that the entire plea put forward by respondent No.2-complainant in the impugned complaint is false inasmuch as the latter (respondent no.2) has no locus standi to challenge the validity of the impugned Will which had been executed by Kulwant Singh (father of petitioner no.1 and husband of petitioner no.2) in favour of his wife and to the exclusion of petitioner no.1. He had thereby bequeathed all his moveable and immoveable property in favour of petitioner no.2 and petitioner no.1 was not made a beneficiary thereunder.

5. I do not buy the argument. As per the conceded case of the parties, a matrimonial litigation between the estranged couple (petitioner

no.1 and respondent no.2) is pending in the Court of Additional District Judge, Ludhiana. That litigation for the grant of a decree of divorce was filed by petitioner no.1 against respondent no.2 in the month of March 2000. On putting in appearance, respondent no.2 filed an application under Section 24 of the Hindu Marriage Act whereby she raised a claim for the award of litigation expenses and maintenance pendente lite. It was thereafter that the petitioners brought about a Will purporting to have been executed by Kulwant Singh on 06.12.1992 in favour of petitioner no.2 – Surjit Kaur. That Will was forged during the pendency of the petition under Section 24 of the Hindu Marriage Act in order to enable petitioner no.1 evade liability to pay any amount of maintenance. For proof of that fact, the petitioner examined a handwriting expert who, on comparison of the disputed signatures and standard signatures of Kulwant Singh appearing on a proposal form (produced by CW6-Gurcharan Singh), opined that those signatures did not tally. Respondent No.2-complainant also adduced evidence to the effect that the exclusion of petitioner no.1 from any benefit under the Will is an illusion inasmuch as the testator purports to have provided in the Will itself that the beneficiary thereunder would look after petitioner no.1 who is otherwise a major and a married man. The plea raised thereby was that if petitioner no.1 had to be actually disinherited, there was no occasion for the testator to have made a provision to the above effect.

6. As correctly noticed by the learned Trial Magistrate in the impugned order itself, the Court is not called upon to go deeply into the merits of a such like controversy which, of course, have shall to be adjudicated upon at the trial. For purposes of issuance of process, all that is required is that the Trial Magistrate should be satisfied that there are

grounds to proceed against the accused. The impugned order is otherwise also a very self-contained affair. The learned Trial Magistrate, in the course thereof, noticed the allegation of respondent no.2-complainant, the identity and nature of evidence given by those examined in the preliminary evidence, and proceeded to record a finding that sufficient evidence had appeared on the file to justify their summoning.

7 It was, then, argued by the learned counsel for the petitioners that if the petitioners have produced a forged Will, it will be for the concerned Court to lodge a complaint in terms of the Code of Criminal Procedure.

8. The plea is bereft of merit on the face of it. Respondent No.2-complainant had only filed a complaint on the indicated allegation and she had also adduced preliminary evidence in support of the averment. She surely has a locus standi to file a complaint because an effort has allegedly been made by the petitioners to deprive her of the litigation expenses and maintenance pendente lite, if an award in her favour comes about in the proceedings under Section 24 of the Hindu Marriage Act which respondent no.2 has filed in the divorce plea preferred by petitioner no.1 against respondent no.2. In any case, the relevant plea in the matter of competence of private complaint, could be raised by the petitioners before the learned Trial Court.

9. In the light of foregoing discussion, I am of the considered view that there is no force in the present petition which shall stand dismissed.

May 07, 2007 (S.D. Anand)
vkd Judge